

**DEPARTMENT OF ECONOMIC AND COMMUNITY DEVELOPMENT  
COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM**

# **INTRODUCTION TO CONSTRUCTION CONTRACTING**

**Some Simple Steps to Make Your  
Federally Assisted Contracting Experience  
More Rewarding and Effective**



**"The Key to Success"**

**Maine Office of Community Development  
111 Sewall Street, 3<sup>rd</sup> Floor  
59 State House Station  
Augusta, Maine 03333-0059  
Steven H. Levesque, Commissioner  
(207) 624-7484 (Voice)  
(207) 287-2656 (TTY)**

# INTRODUCTION TO CONSTRUCTION CONTRACTING

## Getting Started

Whether this is your first involvement with the CDBG construction contracting process or you're an "old hand" at getting projects out to bid and working with contractors, this guide is intended to make your life a little easier. Let's begin by reviewing the very basic principals that guide the process of contractor selection in the CDBG program. These principals are set forth in 24 CFR - Part 85 which deals with the entire gambit of Federal Administrative Procedures. You will be receiving a complete copy of Part 85 as part of the CDBG Administrator's Guide. We will concentrate in this document on Section 85.36 which outlines procurement procedures in Federal programs.

The very basis of 85.36 is that "all procurement transactions will be conducted in a manner providing full and open competition...". Bids for construction projects are almost uniformly through the ***Procurement by Sealed Bids (Formal Advertising) Method***. The highlights of this process are:

- ☒ Bids are publicly solicited (newspaper ads, mail outs, Dodge Report, etc.)
- ☒ Sufficient time is allowed for potential bidders to respond (3-6 weeks as a rule)
- ☒ Invitations to bid must contain all necessary information to assure proper response
- ☒ All bids will be publicly opened at a pre-set time and place
- ☒ A fixed-price contract will be awarded to the lowest responsive & responsible bidder
- ☒ Any and all bids may be rejected for a sound, documented reason

Here are a few very important points to remember.

- ↔ A fixed price contract is just what it implies - a pre-agreed upon price for a specific, definable task as established in the bid. "Cost Plus" (pre-set payment plus a percentage) contracts are strictly prohibited.
- ↔ More difficulty arises out of defining a "responsive and responsible bidder" at the time bids are tabulated than any other issue. Simply put, this difficulty is responsible for a large majority of bidder disqualification and protests.
- ↔ Each bidder must complete all required sections of the bid form to be considered "responsive". This includes all bid forms, written certifications, and bid schedules.

- ↔ In considering whether bidders are "responsible", criteria such as providing previous work and financial references may be included in the bidding requirements.
- ↔ A contract may be awarded to the lowest bidder who meets the definition of "responsive" and "responsible". It is extremely important to understand that all criteria used in the bidder evaluation process must be clearly included in the bid documents and may not be subjectively applied after the fact.

Part 85.36 also establishes standards for community officials performing procurement actions and administering construction contracts. Highlights of these standards include:

- ☒ Maintenance of a contract administration system assuring that contractors perform in accordance with the terms and conditions of their contracts
- ☒ Maintenance of a written code of standards of conduct for contracting employees
- ☒ Assurance that unnecessary or duplicative purchases are not made
- ☒ Awarding contracts only to responsible contractors
- ☒ Maintenance of records that detail the history of procurement action such as: method of procurement, contractor selection, and basis of contract price
- ☒ Written policy for settling all contractual and administrative issues arising out of procurement processes (protests, disputes, claims, etc.)

## The Timing

Just when is all this going to happen? With the completion of Phase II, and receipt of an encumbered contract and environmental review clearance from the Office of Community Development, you have taken the first steps toward construction contracting. But what now? Many of the actions you have taken during Phase II will be instrumental in starting the process. Most likely you have established a relationship with a design professional such as an architect or engineer who assisted in preliminary design and cost determination. The design professional will most likely play an important part in the contracting process until completion. One of the most important things to consider prior to beginning the actual contracting process is who will be responsible for each area of contract compliance. All too often communities turn everything over to the design professional without having a complete understanding of their responsibilities. A community could potentially benefit (yes, financially too) by taking a more active role in the process.

Talk to your engineer or architect about their expectations regarding the forthcoming contracting process. They will let you know exactly what their usual level of involvement is and offer suggestions on where your efforts would be most valuable. The following are normal activities a design professional will undertake during the course of the contracting process:

- ☒ Compilation of bid documents for project manual
- ☒ Development of technical specifications and bid requirements
- ☒ Participation in pre-bid & pre-construction meetings
- ☒ Development of general conditions of the contract
- ☒ Answer questions from contractors during bid process & issue addendum
- ☒ Initial review of submitted bids and recommendation for award
- ☒ Construction inspections and contractor payment authorizations
- ☒ Issue contract change orders
- ☒ Control substantial and final completion of project

One area most design professionals don't usually want to be involved in is Federal Labor Standards Compliance. If you are considering your design professional in this capacity, be prepared to pay dearly for it! You will be charged their normal professional rate for this service which entails payroll reviews, employee interviews, restitution of underpayments to employees, and record keeping. Discuss this with your design professional and you will probably find that substantial money can be saved by doing these activities locally with present staff, volunteers, or a clerk of the works. The level of involvement you choose should be directly related to the amount of time local staff or volunteers will have to assist in the process. If you choose to use a clerk of the works on your project, they will participate in a wide array of contract compliance activities. These include attendance at all contractor's meetings, relaying information to your design professional, signing certain invoices, participation in inspections, working with local official officials and committees, and labor standards compliance.

## The Bid

When all funding sources are secure, CDBG environmental review and Phase II requirements complete, engineering or architectural plans and specifications submitted, and weather concerns satisfied, its time for you and the design professional to start the process of "getting the project out to bid". While not as scary as some people find it, the process must be well planned with careful attention paid to CDBG and other state and federal bidding requirements. Construction contracting calls for a Project Manual (Bid Package) to be assembled that will be the key document throughout the bidding and actual construction segments of your project.

The Project Manual contains several key sections. Depending upon the anticipated dollar amount of the proposed contract these sections may include:

- ☒ **Invitation to Bid** - This is the same notice that will appear in the newspaper to

advertise for potential bidders. It will inform bidders where the Project Manual may be obtained or examined, whether bonding requirements will be in effect, if a pre-bid meeting is to be held, a short summary of the work to be performed, the contact person for the bids, and the time and place the bids will be due.

- ☑ **Instructions to Bidders** - Informs the bidders of the procedures for submitting a bid, what form the bid must be submitted in, specific bonding requirements, and the form of contract to be in effect for the project. These instructions are usually standard forms supplied by the design professional.
- ☑ **Supplementary Instructions (if needed)**- Will give additional information to the bidders regarding any special instructions specific to your project. Your design professional will let you know if this section will be necessary.
- ☑ **Bid Form** - These pages are filled in by the bidder and will form the basis for their total bid. Bid forms may vary by project and contain unit or total pricing, as well as any bid alternatives. Bid alternatives are items you may choose to add or delete from the base bid depending upon your available funding and how high the bids come in.
- ☑ **Standard Form of Agreement (SFA) or Standard General Conditions (SGC)** - These are the standard contracts produced by the American Institute of Architects (SFA) and National Society of Professional Engineers (SGC). Either document serves as the backbone of the contract and contains such information as payment provisions, termination clauses, final completion requirements, applicable bonds, use of subcontractors, permitting requirements, and many other conditions. There is sometimes a Supplementary Conditions section to the construction contract as well. This would contain items that pertain to a specific project such as the requirement for the contractor to carry higher limits of liability insurance.
- ☑ **Federal Contract Provisions** - These provisions are supplied by the CDBG program and may vary slightly according to the proposed contract amount. These provisions must be included in every CDBG contract.
- ☑ **Technical Specifications or Special Project Procedures** - Both terms refer to the portion of the contract documents which tell the contractor what type of materials are to be used and the standard to which they must be installed. Areas of these sections also deal with testing and reporting requirements of products and technical procedures.

The Project Manual is usually printed by the design professional, who pays the printing cost. A fee is charged to interested bidders that ranges from about \$25.00 to \$100.00 depending on the size and complexity of the project. Decide up front who is paying for what and who will receive the fee paid by contractors to obtain plans. Whoever receives the fee, remember that it is not considered CDBG Program Income.

Your project should be ready to put out to bid after a final review to assure it's complete. Don't forget to ask your CDBG Project Development Specialist to assist you in this review! The

next step is to place your Invitation to Bid (ITB) in local or regional newspapers in the legal advertisement section. The rule of thumb is that at a minimum, it should be advertised for 2-3 consecutive days in the daily newspaper that enjoys the largest circulation in your area. Regional Sunday papers are also a good bet. ITBs are usually provided to the Dodge Report or regional viewing rooms that specialize in alerting contractors to current bidding opportunities. While there is no hard and fast rule, it is always a prudent move to allow sufficient time for bidders to respond to your ITB. A minimum of 3 to 6 weeks is common.

Many ITBs require a potential bidder to attend a mandatory pre-bid meeting in order to be eligible to submit a bid. At the pre-bid meeting the design professional, representatives of funding sources and community will outline all necessary requirements for submitting a bid. Generally, there is a walk through that allows the bidders to view the job site. Sometimes an item arises that requires a clarification to be issued to all bidders in the form of a written addendum. During the period between the pre-bid meeting and bid opening it is important to assure that any addendum is issued in writing to all eligible bidders.

Care must be taken prior to opening of bids to assure that one person is responsible for answering all questions posed by potential bidders. Whenever these answers are of a significant nature, responses should be made in writing and available to all bidders. This is essential in assuring that no bidder gains an unfair advantage.

The day has come at last! Bid opening! A few precautions can save you headaches.

- ☒ A few minutes prior to the bid deadline make a "friendly search" in and around the prescribed place of bid opening to see if any contractors are inadvertently killing time. Check in the designated smoking area, (if one exists). Politely let anyone you encounter know that the time is near. Whatever you do, don't take it upon yourself to call any bidders or otherwise contact potential bidders not currently present. When the deadline comes and goes, accept no further bids.
- ☒ Carefully open all bids and log them in.
- ☒ Announce only who the **apparent** low bidder is.
- ☒ Answer any general questions about the review timeframe and process
- ☒ End the meeting.

The design professional will then usually begin to review the bids to see if each bidder has complied with all requirements of the bid documents and check out financial and work references (if required). Remember, you are looking to award the contract to the lowest responsive and responsible bidder. It is extremely important to remember that no matter if the bid review is done by the design professional or a local board or committee, each bid must be reviewed in exactly the same manner and strictly according to the Project Manual requirements. Bids that do not complete all necessary sections, or do so incorrectly, should be rejected. The design professional or other evaluator should make a written recommendation for bid award to the selectmen, council or other party with responsibility for contract award. This

recommendation should clearly indicate the review process used and ratings for each bid submitted.

It is vital that a thorough, written record of the review process be kept that documents the basis for contractor selection. It is important that the contract award be formalized through adoption by the council, selectmen, etc. Written notification in the form of a Notice of Award should be made to the successful bidder. Each unsuccessful bidder should also be notified in writing of the results of the ITB process.

You have now identified the lowest responsible and responsive bidder and a few simple steps remain before a contract is signed

- ☒ Make sure that the contractor has submitted all Payment and Performance Bonds
- ☒ Check the contractor's certificate of insurance to ensure that it meets the CDBG minimum program requirements

(Bonding and Insurance requirements for the CDBG program are included in **Policy Letter #4** of the CDBG Administrator's Guide.)

- ☒ Negotiate bid alternatives
- ☒ Conduct a pre-construction conference

You will be ready for the official contract signing once these step are completed. This is most commonly done in conjunction with the pre-construction conference, which will be attended by the contractor, funding agencies, design professional, and hopefully, you! Signed copies of the pre-construction minutes will be distributed to all attendees. It should be noted that the CDBG program pre-construction conference requirements may differ from those of other funding sources and the design professional. This often results in two different signed records being required. After the contract is signed a Notice to Proceed will be issued to the contractor outlining the approximate date that work will commence.

## **Let the Work Begin!**

With a little luck and the cooperation of Mother Nature your project will soon be underway! Contracting practices will blend from this time forward with Federal Labor Standards Compliance. Your project will go most smoothly if clear areas of responsibility have been set forth and are maintained throughout construction. The design professional will play a key role in assuring that quality control is at a high level. They will have primary responsibility for inspection, authorization of payment, keeping the project on schedule, and determining substantial and final completion.

Your role during the construction process will vary depending on how much involvement your community has with the process. Whatever method you choose, here are a few hints to assist in building good contracting habits.

- ☒ Remember that the contractor should be treated as a professional
- ☒ Follow written standards for conflict resolution
- ☒ Be sure that all parties heed the terms and conditions of the contract
- ☒ All additional work should be approved in advance by a written process
- ☒ All work must be inspected prior to payment
- ☒ Attend all required contractor meetings